IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 33036 of 2006(G)

PETITIONER:

T.A.CHACKO, THADATHIL HOUSE,
NALLATHANNI ESTATE, MUNNAR P.O., IDUKKI DIST.,
PIN-685 612.

BY ADV. SRI.R.ANILKUMAR
SRI.P.BANI

RESPONDENTS:

1. MUNNAR GRAMA PANCHAYAT (SPECIAL GRADE),
REPRESENTED BY SECRETARY, MUNNAR P.O.,
PIN-685 612, IDUKKI DIST.

2. DEPUTY DIRECTOR OF PANCHAYAT,
IDUKKI, THODUPUZHA.

3. SUB COLLECTOR, DEVIKULAM,
REVENUE DIVISIONAL OFFICE, MUNNAR.

4. STATE OF KERALA, REP. BY SECRETARY,
LOCAL SELF GOVT., SECRETARIAT, TRIVANDRUM.

BY ADV. SMT.AYSHA YOUSEFF, SC, MUNNAR G.PANCHAY
SMT.MOLLY JACOB, SC, MUNNAR G.PANCHAYAT
GOVT. PLEADER SRI.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No.33036 OF 2006

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Dated this the 27th day of June, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner executed a contract with the first respondent on 06/09/2003. As per the terms of the contract petitioner agreed to install a plant for conversion of Panchayat waste into Organic manure through Vermi composting process. Petitioner has done his part. But the first respondent has not furnished any electricity, water and grinding machine and hence contract could not be performed. Petitioner purchased about Rs. 12 lakhs seed worms for the functioning of plant and it was damaged. Petitioner made representation. By Ext.P5 first respondent has forwarded a letter to the petitioner. It was informed that contract period will be further extended as they could not perform their part of agreement. It is stated that the vermi composing unit could not start due to the total negligence of the first respondent.

2. The prayer in the writ petition is for a direction to the

first respondent not to terminate the contract holding that the petitioner is entitled to commence the contract for two years and the alleged delay was due to the non-performance of the terms of contract on the part of the first respondent and not to issue contract to third person without complying tender formalities provided under the Kerala Panchayat Raj (contract) Rules. A direction is also sought to ensure that first respondent will not issue new contract to third party. Further claim is for Rs. 13 lakhs to the petitioner as compensation in case award is issued to third person without terminating the contract of the petitioner.

3. Counter affidavit is filed by the respondents. In the counter affidavit it is interalia stated as follows:

The work was awarded to the petitioner for an amount of Rs. 1.85,000/-. As per Ext.P1 agreement petitioner has to remit Rs. 24,524 on 31-03-2003 to 31-07-2003, 31-11-2003, 31-3-04 and 31-07-2004 and he has also to deposit earnest money of Rs.15,000/-. But the petitioner did not remit the above instalments. He has only remitted a total sum of Rs. 40,875/- and an earnest money of Rs. 15,000/-. In order to get over the consequence of the non-remittance of the remaining dues and violation of the terms in Ext.P1 agreement he has come up with

the story of non- performance of the terms and conditions of tender norms by the Panchayat. The Panchayat has provided all facilities for the vermi composing unit except the chopping machines and grinder I, the absence of which the work can be done manually. As the above facility was not extended by the Panchayat, the 10% additional amount as specified in clause 9 of Ext.P1 was not demanded from him.

4. It is submitted by the learned counsel for the Panchayat that the work is already awarded to somebody else. Reply affidavit is also filed by the petitioner.

The contract was executed on 16/12/2002 according to the Panchayat. According to the petitioner, it was executed on 06/09/2003. In the nature of the contentions raised and the disputes arising, I find that this is a matter in which the petitioner has to approach the appropriate forum for seeking such reliefs as he is entitled. Reserving the liberty of the petitioner to approach the appropriate forum, writ petition is disposed of.

(K.M.JOSEPH, JUDGE)

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